

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:	)	
	)	Chapter 11
Collins & Aikman Corporation, et al.	)	Case No. 05-55927
Debtors.	)	(Jointly Administered)
_____	)	
	)	
Collins & Aikman Corporation, et al.,	)	
Plaintiffs,	)	
	)	
v.	)	Adv. Proc. No. 06-04435
	)	
Northern Trust Bank of	)	
California, N.A., as Trustee, and	)	
Lawrence Friedman, Wilhelm A.	)	
Mallory, Ronald D. Strongwater,	)	
James N. Vantatenhove, Seymour	)	
Strasberg and Sanford Sigoloff,	)	
Defendants.	)	
_____	)	

Opinion Regarding Cross Motions for Summary Judgment

This matter is before the Court on the parties’ cross motions for summary judgment. The Court has determined that oral argument is not necessary in this matter and that the debtors are entitled to judgment.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment may be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” “A fact is ‘material’ and precludes grant of summary judgment if proof of that fact would have [the] effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect [the] application of appropriate principle[s] of law to the rights and obligations of the

parties.” The court must view the evidence in a light most favorable to the nonmovant as well as draw all reasonable inferences in the nonmovant’s favor.

*United States v. Certain Real Prop.*, 800 F. Supp. 547, 549-50 (E.D. Mich. 1992).

## I.

On May 17, 2005 , the debtors filed their voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code. On March 7, 2006, the debtors filed this complaint for turnover of estate assets. The complaint sought the turnover of all assets of a trust that was created pursuant to an April 30, 1985, trust agreement between Wickes Companies, Inc. and Trust Services of America. Defendant Northern Trust Bank of California, N.A., is the successor trustee of the trust.

On March 20, 2006, Lawrence Friedman, Wilhelm A. Mallory, Ronald D. Strongwater, James N. Van Tatenhove, Seymour Strasberg and Sanford Sigoloff, as trust beneficiaries, filed a motion for intervention, a counterclaim and a cross-claim. The beneficiaries claim they are entitled to the assets of the trust.

On April 3, 2006, Northern Trust filed an answer to the complaint, the counterclaim and the cross-claim. Northern Trust also filed a counterclaim and cross-claim in interpleader seeking a resolution of the adverse claims regarding the trust assets and an order allowing it to deposit the assets with the Court registry.

The parties have filed a stipulation to the following facts:

Since the inception of the Wickes Rabbi Trust, established on April 30, 1985 for the purpose of paying supplemental retirement benefits to former executives of Wickes Companies, Inc. (the “Trust”), the Beneficiaries have never prepared any returns or claimed responsibility for paying any tax liabilities generated from the Trust’s

assets; and

To the extent that distributions were made to the Beneficiaries pursuant to the trust agreement governing the Trust, such distributions were accepted and retained by the Beneficiaries. At no time did the Beneficiaries renounce, return or reject any distribution made pursuant to the Trust agreement up to and including May 31, 2005. Further, the Beneficiaries stipulate that they have received all monthly Trust distributions through and including May 31, 2005 and disavow any claim, right or entitlement, if any, that they failed to receive any such distributions prior to May 31, 2005.

Paragraph 6.02 of the Trust agreement states:

Notwithstanding anything contained herein to the contrary, the assets of the Trust shall at all times be subject to the claims of the Company's creditors as if the assets herein were general assets of the Company; provided, however, that the Trustee shall have no power to make any such trust assets available to the general creditors of the Company unless and until the Responsible Officer or a court of competent jurisdiction (the "Court") shall notify the Trustee in writing that the Company is unable to pay its debts as they mature or that the Company has or will imminently become subject, as a debtor, to a pending proceeding under the Bankruptcy Code. By such notice, the Responsible Officer or the Court shall direct the Trustee to, and the Trustee shall, deliver any and all Trust Assets only as the Court may direct to satisfy claims of the Company's creditors.

Paragraph 1.04 states:

All title in and to the assets comprising the Trust Fund shall at all times be vested exclusively in the Trustee for the purposes provided herein and no person shall have any title thereto except as provided hereunder or in the Agreements. No Employee or former Employee, including any former spouse thereof or any other person claiming under them shall have any right to, or interest in, any part of the Trust Fund, except to receive benefit payments as provided hereunder.

In November 1998, the trust purchased annuities for each of the beneficiaries "to secure [their] monthly distributions from the plan." (See Beneficiaries' Motion, Ex. D) The purchase of these annuities was provided for by paragraph 3.04(c), which stated that the annuity would then be

retained by the trustee as the sole asset of the trust fund. The trust then sent letters to the beneficiaries explaining that the annuities had been purchased and that the purpose of the trust had been accomplished. The letter also stated, “As continuing Trustee for the Plan, Northern Trust will hold the annuity policy and act as your conduit payer of your monthly benefit.” The letter also indicated an intent to revert excess assets to the company as provided in Trust Section 6.09.

Letters from Northern Trust to the debtors indicate that Northern Trust wired excess trust funds in the amount of \$1,100,000 on December 18, 1998, and \$1,000,000 on January 22, 1999. The letter further indicates that \$900,000 was retained for future fees and contingencies. Northern Trust continued to make monthly payments to the beneficiaries through May 2005. Northern Trust asserts that it did not make the June 2005 payment because it became aware of the bankruptcy proceeding.

## II.

In the present case, the first issue is whether the annuity purchased by the trust remained a trust asset or whether the trust terminated upon purchase of the annuity. The trust agreement specifically calls for the purchase of an annuity and states that the annuity shall remain the sole asset of the trust. Moreover, nothing in the annuity documents indicates that the beneficiaries own the annuity. Rather, they are simply identified as beneficiaries. Accordingly, the Court concludes that the annuity remained an asset of the trust.

## III.

The second issue is whether the trust assets are property of the bankruptcy estate subject to turnover.

The commencement of a bankruptcy case “creates an estate.” 11

U.S.C.A. § 541(a). The bankruptcy estate consists of, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C.A. § 541(a)(1). Section 542 requires a debtor to turnover all property of the estate to the trustee for administration. Likewise, if property of a debtor is in the hands of custodians, including trustees of a trust, said custodians must deliver the property and any proceeds therefrom to the trustee pursuant to 11 U.S.C.A. § 543(b).

*In re Wachter*, 314 B.R. 365, 371 (Bankr. E.D. Tenn. 2004). *See also U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05, 103 S. Ct. 2309, 2313-14 (1983).

To obtain turnover under § 542(a), the trustee must establish the following elements: (1) the possession, custody, or control of property by an entity; (2) the property must be property that the trustee can use in accordance with § 363; and (3) the property must have more than an inconsequential value or benefit to the estate. *Lucas v. Lucas (In re Lucas)*, 100 B.R. 969, 972 (Bankr. M.D. Tenn. 1989), *rev'd on other grounds*, 924 F.2d 597 (6th Cir. 1991), *cert. denied*, 500 U.S. 959, 111 S. Ct. 2275, 114 L. Ed.2d 726 (1991); *General Motors Acceptance Corp. v. Radden (In re Radden)*, 35 B.R. 821, 826 (Bankr. E.D. Va. 1983).

*In re Matheney*, 138 B.R. 541, 548 (Bankr. S.D. Ohio 1992).

The burden of establishing that the debtor has an interest in the property is on the plaintiff. *Weiss-Wolf, Inc. v. Israel Discount Bank Ltd. (In re Weiss-Wolf, Inc.)*, 60 B.R. 969, 975 (Bankr. S.D.N.Y. 1986). State law controls the determination of whether or not the estate has an interest in the property for which turnover is sought. *Kempf v. Internal Revenue Service (In re American Way Food Service Corp.)*, 48 B.R. 79 (Bankr. W.D. Mich. 1985).

This issue was addressed directly and persuasively in *In re Outboard Marine Corp.*, 278 B.R. 778 (N.D. Ill. 2002):

It is undisputed that the Trust at issue is a grantor trust-sometimes called a “rabbi trust”-in which an employer makes contributions to the trust in the name of beneficiaries to create a source of funding for otherwise unfunded benefit plans. Because the trust corpus technically remains property of the employer, the beneficiaries of the trust are not taxed on their portion of the Trust corpus or Trust proceeds until the assets are actually distributed to the beneficiaries. *See generally*, 26 U.S.C. § 671 et seq.; *McAllister v. Resolution Trust Corp.*, 201 F.3d 570, 575 (5th Cir.2000). As a condition for this tax benefit, rabbi trusts are required to remain at all times subject to the claims of the grantor’s general creditors. Thus, once a grantor files for bankruptcy, the rabbi trust corpus becomes property of the grantor’s bankruptcy estate. *See, e.g., Goodman v. Resolution Trust Corp.*, 7 F.3d 1123 (4th Cir. 1993).

*Id.* at 785 (footnote omitted).

The annuity is the sole asset of the trust. By the terms of the trust and the bankruptcy code, the trust assets are available for distribution to the debtors’ creditors. The debtors are therefore entitled to turnover of the trust assets.

The Court will enter an appropriate order granting judgment to the debtors.

For Publication

**Entered: August 09, 2006**

/s/ Steven Rhodes  
**Steven Rhodes**  
**Chief Bankruptcy Judge**